

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

Petition of Verizon Local and Long Distance)
Telephone Companies for Forbearance Under)
47 U.S.C. § 160(c) With Regard to Certain)
Dominant Carrier Regulations for In-Region,)
Interexchange Services)

WC Docket No. 06-56

REPLY OF AT&T INC.

AT&T Inc., on behalf of its affiliates (“AT&T”), submits the following reply to Sprint-Nextel’s comments opposing Verizon’s Petition for Forbearance.¹

Sprint-Nextel’s assertion that “BOCs have only increased their market dominance within their regions”² is wrong, and it fundamentally ignores the Commission’s *SBC-AT&T* and *Verizon-MCI Merger Orders*,³ which found that the mergers would not result in anticompetitive effects in any relevant market.⁴ The mounds of evidence confirming the high levels of both intramodal and intermodal competition for all interexchange

¹ For the sake of brevity, this reply focuses on points that were not fully addressed in AT&T’s initial comments.

² Sprint-Nextel at 6; *see also id.* at 9 (“Verizon’s acquisition of MCI compounds its market power”).

³ *SBC Communications, Inc and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 (2005) (“*SBC-AT&T Merger Order*”); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005) (“*Verizon-MCI Merger Order*”).

⁴ *SBC-AT&T Merger Order* ¶ 3; *Verizon-MCI Merger Order* ¶ 3.

services, as well as proof that customers both willing and able to “vote with their feet” if their carrier attempts to impose undesirable rates, terms or conditions, refutes any notion that a BOC could be a “dominant” provider of any relevant services.⁵

Sprint-Nextel’s claim (at 6) that the bundling of local and long distance services increases Verizon’s market power not only flies in the face of the Commission’s recent findings to the contrary, but it also ignores that bundling creates all-distance service packages, another fact made clear by the Commission’s recognition that the standalone long distance market has been relegated to “fringe” status.⁶ Thus even the notion of “misallocating” costs between services in such all-distance bundles – which are now the primary form of competition among a wide array of suppliers, including ILECs, CLECs, wireless, cable and VoIP providers – has become meaningless.⁷

Similarly, Sprint-Nextel’s attempts (at 7-9) to minimize the competitive impacts of various types of intermodal competition all fail for the simple reason that BOC long distance services must compete against an array of both intermodal and intramodal

⁵ Verizon has made clear that it seeks forbearance “only [for] the provision and offering of long distance services and . . . not . . . access services.” Verizon Memorandum of Points and Authorities (“VZ Mem.”) n.4. Thus, Sprint-Nextel’s arguments relating to BOCs’ alleged market power over special access are not pertinent. *See also* n.7 below.

⁶ *SBC-AT&T Merger Order* ¶ 91.

⁷ Sprint-Nextel’s additional claim (at 6) that the BOCs’ alleged market power “makes it easier to engage in . . . discriminatory wholesale pricing” (*see also id.* at 8 (BOC competitors must rely on BOC special access)) is not pertinent here, because, as noted above, Verizon has not sought relief for its access services. Moreover, questions relating to wholesale pricing and performance are currently pending before the Commission in other proceedings and should be resolved in those fora. Further – and most important for these purposes – the Commission has recognized that the rules from which the Petition seeks forbearance are not designed to deal with wholesale issues at all. *See* AT&T Comments n.47. Thus, there is no meaningful connection between the rules for which forbearance is sought and the harms Sprint-Nextel alleges.

competitors. It is the combined effects of *all* those modes of competition that is relevant in assessing BOCs' market power, not the specific amount of competition provided from any single mode at any moment in time. Thus, for example, Sprint-Nextel's argument (at 7) that only a modest percentage of wireless customers have chosen to "rely upon wireless services for all their communications needs" is immaterial here, because total service substitution is not necessary for wireless to have a substantial dampening effect on BOCs' ability to exercise market power over long distance rates. In fact, the *SBC-AT&T Merger Order* specifically recognized that wireless services "are [included] in the relevant [long distance] market based upon usage substitution" and that "SBC and AT&T consider minute substitution in their business strategies."⁸ Moreover, even if wireless services do not have a price constraining impact on all consumers' needs for primary wireline services (Sprint-Nextel at 7), wireless is only a part of the total competitive market. Substantial competition for primary wireline service also comes from CLECs, cable and VoIP providers that all offer (and are increasingly successful in providing⁹) direct alternatives to BOC primary wireline services. Similarly, even if it were true that cable offered only limited competition in the business market (*see* Sprint-Nextel at 8), the

⁸ *SBC-AT&T Merger Order* ¶¶ 92, 93. The fact that some minute substitution may go to an affiliated wireless supplier (*see* Sprint-Nextel at 7) is also immaterial. BOC wireless affiliates are also in direct competition against non-affiliated wireless suppliers and must price their services accordingly.

⁹ *See, e.g.*, "Comcast Reports First Quarter 2006 Results," Comcast Press Release, April 27, 2006 (Comcast's CEO states "our 'Triple Play' package of voice, video and data services . . . will continue to reinforce our competitive advantage and position us to deliver more value to our customers and shareholders.")

Commission has recognized that competition for business customers comes from an even broader group of suppliers, including systems integrators and equipment vendors.¹⁰

Sprint-Nextel's attempt to use (at 12) data on BOCs' long distance "shares" of their own local wireline customers to support a claim of BOC market "dominance" is also unavailing. First, mere market share is not dispositive of anything in this regard. Rather, market share is at best a threshold issue in the dominance analysis, which must ultimately be resolved by reviewing both supply and demand elasticities.¹¹ Here, the facts on such elasticities compellingly show that no BOC can unilaterally raise and maintain its prices for long distance services. Second, figures based on BOCs' "own line shares" are incomplete, because they ignore the long distance usage of the growing numbers of customers who use competitive local services, and they also do not take minute substitution into account. Third, even if the BOCs' "own line" data were somehow relevant, they do not rise above the market share levels that legacy AT&T Corp. held when the Commission declared it non-dominant a decade ago.¹² Thus, these figures offer no credible proof that BOCs possess any form of market power.

And critically, despite much arm-waving, Sprint-Nextel does not offer a shred of evidence to show why the regulations at issue are necessary to protect against the alleged (and mostly non-existent) harms it cites. Given the strong record affirmatively

¹⁰ *SBC-AT&T Merger Order* ¶ 63.

¹¹ See, e.g., *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd. 3271 (1995) ("*AT&T Reclassification Order*") ¶ 57 & n.163 ("It is well-established that supply and demand elasticities are properly considered in assessing whether a firm has market power in the relevant product and geographic markets").

¹² *Id.* ¶ 40 (AT&T's market share approximately 60%).

supporting forbearance under the Section 10 criteria, a specific point-by-point showing by Sprint-Nextel should be required to demonstrate why each of the subject requirements is in fact necessary to protect consumers or the public interest.¹³ Failing such a demonstration, the record only supports one conclusion: the requested relief should be granted.

Finally, AT&T agrees with Sprint-Nextel (at 4) that there are many other pending Commission dockets that should be decided. However, the controlling fact is that rampant long distance competition is marching on unabated in the interim, and the relief Verizon seeks is both justified and necessary to maintain a fully competitive market.¹⁴

Respectfully submitted,

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May 1, 2006

¹³ The first prong of the Section 10(a) forbearance test is obviously met because Sections 201 and 202 will continue to apply to the affected services. AT&T Comments at 18-19.

¹⁴ See AT&T Comments at 1-2.